80-162

Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

NO._____

JACK E. TURNER,

Petitioner,

vs.

E. T. RAYNES AND BILL EDD JONES,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

EBB B. MOBLEY, ESQ.

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Attorney for Petitioner

QUESTION PRESENTED FOR REVIEW

Whether a Texas Justice of the Peace who convicted a civil litigant of a non-existent crime and then incarcerated that litigant is clothed with judicial immunity for such acts under federal civil rights statutes.

PARTIES

Petitioner Jack E. Turner is a private citizen, and Respondent E. T. Raynes was formerly Justice of the Peace, Pct. 1, Wood County, Texas.

Wood County Sheriff Bill Edd Jones is not a party to this petition.

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The Petitioner, JACK E. TURNER prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered on March 18, 1980.

OPINION BELOW

The Memorandum of Decision and Order

of the United States Circuit Court for the Eastern District of Texas granting Respondent's Motion for Summary Judgment is unreported.

The Opinion of the U.S. Court of Appeals for the Fifth Circuit is reported at 611 F2d 92.

JURISDICTION

The judgment of the U. S. Court of Appeals for the Fifth Circuit was entered on March 18, 1980.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The federal statutes involved are:

1. United States Constitution, Amendment XIV, Section 1.

2. 42 U.S.C. §1983.

The Texas statutes involved are:

1. Articles 7.01 et seq., Texas Code of Criminal Procedure (Vernon's 1980).

2. Article 5972, Texas Revised Civil Statutes (Vernon's 1979).

STATEMENT OF THE CASE

On August 27, 1977, Respondent Raynes in his capacity as Justice of the Peace accepted a complaint by Nelda Pruitt against her neighbor Jack E. Turner for a peace bond. Turner was arrested by deputies of Respondent Jones and confined in the Wood County jail until he posted

an appearance bond on August 29, 1977.

On September 1, 1977, Raynes conducted a peace bond hearing and at the conclusion required Turner to post a $1,000.00 peace bond, which he did.

Thereafter, Raynes accepted a second complaint against Turner for "violation of peace bond". Turner was rearrested on September 23, 1977, and remained in jail until October 19, 1977. Raynes then conducted a second trial, and at the conclusion ordered Turner confined in the Wood County jail for one (1) year and a day for "violation of peace bond".

Turner thereafter through counsel filed an application for a writ of habeas corpus in the 115th Judicial Court of Wood County, Texas, and on October 31, 1977, Turner was ordered discharged from

his confinement. The state court trial judge made specific findings of a lack of jurisdiction in Raynes to act as he did. Raynes later admitted in deposition that he had never attended mandatory training courses in the conduct and administration of his office. Thus it can be concluded that Raynes as a layman had no real concept of his office other than that picked up as on-the-job training as a Judge.

REASONS FOR GRANTING WRIT OF CERTIORARI

I.

This petition should be granted because the opinion below represents an unwarranted departure from prior applicable decisions of this Court concerning judicial immunity.

The doctrine of judicial immunity is firmly entrenched in federal law. In the case of Bradley vs. Fisher, 80

U. S. (13 Wall) 335 (1872), the U. S. Supreme Court established a common law fule of judicial immunity for torts commited in the exercise of jurisdiction, even if the torts be alleged as malicious or corrupt. In Pierson vs. Ray, 386 U.S. 547 (1967), the Court extended judicial immunity to liability for damages in a 42 U.S.C.A. §1983 action. Again the test was whether or not the judge had acted within his judicial jurisdiction. Using much criticized logic, the Court felt that it was not Congress's intent to abolish the principle of judicial immunity because it was "...well established and we presume that Congress would have specifically so provided had it wished to abolish the doctrine." Ibid, 386 U.S. 555.

In Stump vs. Sparkman, 435 U.S. 349 (1978), the Supreme Court chose an extreme factual situation to reaffirm that judges are absolutely immune from liability for unconstitutional acts committed under color of their jurisdiction. Judge Stump was alleged to have deprived a fifteen-year-old girl of her right to due process of law when he approved her mother's petition for permission to sterilize the girl in an ex parte proceeding for which the daughter was not notified, no guardian ad litem was appointed for the daughter, and no hearing was held. The Court justified a broad rule of judicial immunity with a reference to the need for a judge to act "under his own convictions, without apprehension of personal consequences," and with a remark about the difficulty

of the judge's duties and his "painful sense of responsibility". Ibid at 363-64.

In the case at bar, the Fifth Circuit finds in Butz vs. Economou, 438 U.S. 478 (1978) an analysis that overrides any distinctions of jurisdiction "like a tide over a sand castle". The Butz decision is characterized thusly:

> "The Court's sweeping decision, unanimous on this score, makes no mention whatever of its early distinctions between "excess" as opposed to "clear want" of jurisdiction or any other such nice matters, being couched in fuctional terms entirely. In the fact of this approach to administrative immunity, it is scarcely conceivable to us that, were the Court faced squarely--as we are here--with determining the type of damages immunity to be accorded a lesser state judicial officer, it would return to and espouse such an archaic and nonfunctional distinction as its earlier opinions have discussed and hinted at but never adopted. We do not see how two such rules could coexist in the jurisprudence."

But the Circuit Court concludes that Judge Raynes is entitled to the same immunity as a justice of the peace as he would be accorded as a magistrate of a superior court, as he would be precisely within an example given in Bradley, "if a judge of a criminal court should convict a defendant of a non-existent crime, he would merely be acting in excess of his jurisdiction and would be immune." 13 Wall, at 351.

Judge Roy Bean, the legendary law west of the Pecos (and a Texas justice of the peace), is reputed to have once fined a corpse $40.00 for carrying a prohibited weapon. And Charles Lynch, a planter and justice of the peace who lived in Virginia during Revolutionary days, gave the English language his last

name as the verb that symbolizes summary vigilante justice in the hands of a hemp-minded mob.

In this case Judge Raynes has ignored any notion of jurisdiction to summarily imprison a civil litigant, without due process. To curb such excess in lower courts would surely not cripple the administration of justice.

II.

This petition should be granted because this case represents an issue of material importance which will affect the scope of personal liability of every lay judge in our country.

Today, there are approximately nine hundred and twenty Justice of the Peace Courts in the State of Texas. Of this number, approximately ten percent

of these are staffed with attorney justices.

The Justice of the Peace Court affords our citizenry with a valuable and readily accessibie forum for the impartial adjudication of minor conflicts. Approximately ninety percent of our citizenry who have contact with our court system either appear only in a Justice of the Peace or Municipal Court. Thus, the lower courts are paramount in the attitudinal perception which our citizens develop of our entire court system.

As a majority of Texas justices of the peace assume office with a minimum of legal or administrative skills, the Texas Legislature amended Article 5972 of the Texas Revised Civil Statutes to include the requirement that all

non-attorney Justices of the Peace complete, on a yearly basis, a course in the performance of their duties. But Respondent Raynes, alghough holding office as a justice of the peace for nine years prior to dealing with Jack E. Turner, did not comply with this statute.

This Court has spoken before in defining lower court, lay judge responsibility: i.e. Ward v. Village of Monroeville, 409 U.S. 57 (1972) (traffic offender tried before a mayor of a town heavily dependent on traffic fines); Tumey vs. Ohio, 273 U.S. 519 (1927) (judge receiving compensation from fines he imposed), and Argersinger v. Hamlin, 407 U.S. 25 (1972) (right to counsel in all criminal trials, regard-

less of the nature of the offense with which Defendant is charged).

That a Defendant has a right of appeal from a lower court or access to habeas corpus (as at bar) is not a guarantee of due process, particularly when the judge completely confuses civil and criminal process. See Gordon v. Justice Court, 525 P.2d 72, 71 ALR3d 551 (1974).

CONCLUSION

This Court should grant the Petition for Certiorari and hear the issue raised in the area of judicial immunity of courts of limited jurisdiction.

Respectfully submitted,

EBB B. MOBLEY, ESQ.
Attorney for
Petitioner

CERTIFICATE OF SERVICE

Copies of Petitioner's Application for Writ of Certiorari to the U. S. Court of Appeals for the Fifth Circuit have been served on Respondents E. T. Raynes and Bill Edd Jones by U. S. mail, postage prepaid, addressed to their counsel of record, James T. Flynt, Flynt and Pickett, P. O. Box 115, Mineola, Texas 75773, this _____ day of _____, 1980.

_____

EBB B. MOBLEY
Attorney for Petitioner

MEMBER OF SUPREME COURT BAR